



PATENT
JNP-0013 (0023-0165)

#11/19/03
OS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Pradeep Sindhu et al.

Application No.: 09/448,124

Filed: November 24, 1999

For: A SWITCHING DEVICE

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Group Art Unit: 2664

Examiner: K. B. Yao

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Technology Center 2600

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

In a restriction requirement dated January 14, 2003, the Examiner required restriction under 35 U.S.C. § 121 among the following groups of claims:

- I. Claims 1-35 and 42;
- II. Claims 36-39 and 43;
- III. Claim 40; and
- IV. Claim 41.

Applicants provisionally elect to prosecute Group I, claims 1-35 and 42, with traverse.

In the restriction requirement, the Examiner alleges that “[i]nventions I, II, III and IV are unrelated” (restriction requirement, pg. 2). The stated ground for the requirement, that groups “I, II, III and IV are unrelated,” is improper. M.P.E.P. § 808.01 states that this ground is “rarely presented, since persons will seldom file an application containing disclosures of independent things.” Further, the Examiner Note to form paragraph 8.20.02 that was used in the restriction

requirement adds, “1. This form paragraph is to be used only when claims are presented to unrelated inventions, e.g., a necktie and a locomotive bearing.”

Each of groups I-IV are related, unlike the M.P.E.P.’s necktie and a locomotive bearing example, and no argument to the contrary may be reasonably made. All of the claims in groups I-IV are directed to the switching device of Figs. 2 and 3, and to its various components and functions set forth in later Figs. 4-27. Moreover, although a “different function” may have been alleged in the restriction requirement, the first prong of the unrelated inventions test, “that [the inventions] are not disclosed as capable of use together,” was not addressed at all in the restriction requirement, much less shown. Nor can this necessary condition for unrelated inventions be satisfied, because Figs. 2-27, to which claims 1-43 are directed, are plainly related as indicated in the specification. The restriction requirement should be withdrawn for at least this reason.

Further, M.P.E.P. § 803 states that for a restriction to be proper, there “must be a serious burden on the Examiner.” Groups II-IV, as defined, encompass only seven claims total. Even if the classification provided for these groups were assumed to be accurate and proper, searching Groups II-IV would only entail searching an additional three subclasses of the same class (i.e., class 370). The search of an additional three subclasses for seven claims hardly places a “serious burden” on the Examiner, particularly where word-based computer searches may be employed.

Finally, Applicants respectfully dispute the classification of groups I-IV into different subclasses. For example, subclass 395.31 associated with Group IV falls under subclass 395.1, which falls under subclass 389 associated with Group I. Thus, the searches for Groups I and IV encompass the *same subclasses*, and do not constitute a “serious burden.” Also, a reading of

claim 40 (i.e., Group III) reveals that it is not, in fact, directed to "arbitrating between line cards," indicating that its classification in class 370, subclass 462 is likely incorrect.


Because of the small number of additional claims (i.e., seven) and the small number, if any, of additional subclasses to be searched (i.e., one or two), Applicants respectfully submit that examination of claims 36-39, 40, 41, and 43 (i.e., Groups II-IV) does not present a "serious burden" on the Examiner. The restriction requirement should be withdrawn for at least this additional reason.

Accordingly, Applicants respectfully request that the restriction requirement be withdrawn, and that all of claims 1-43 be examined on their respective merits.

To the extent necessary, a petition for an extension of time under 37 CFR 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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